



Associated Builders and Contractors

Golden Gate Chapter

June 30, 2004

California Energy Commission
Docket Office
Attn: Docket 04-SIT-1
1516 Ninth St., MS-4
Sacramento, CA 95814-5512

**Re: Docket Number: 04-SIT-1
Causes of Petroleum Development Constraints**

Dear Sir or Madam:

The Golden Gate Chapter of Associated Builders and Contractors represents more than 500 predominantly non-union contractors in the Northern California construction industry. Our contractor members build industrial, commercial, public works, and multi-unit residential projects. The Dublin, California-based Golden Gate Chapter is one chapter of an 80-chapter national association that includes within its membership some of the largest industrial contractors in the country.

The Siting Committee of the California Energy Commission held a workshop on June 28, 2004 investigating the causes of petroleum infrastructure development constraints in California. One cause of constraints not mentioned by panelists during the day-long workshop was the abuse of the permitting process by special interest groups with primary objectives unrelated to environmental protection. Of concern to our members is environmental permit extortion, or "greenmail," used by construction unions to win Project Labor Agreements (PLAs) or other exclusive union agreements from petroleum infrastructure developers at the expense of non-union contractors and their employees.

California's permitting process today is entangled in the struggle between construction unions and non-union contractors and their trade associations over control of major construction projects. By requesting excessive data from industrial developers and using other tactics to increase costs and cause delays in the permitting process, unions are able to exert pressure on these developers to win PLAs on construction projects.

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Industrial contractors in the Golden Gate Chapter of Associated Builders and Contractors first experienced the exclusionary effects of this union greenmail during the first phase of refinery conversions in the early 1990s to produce reformulated gasoline. Since then our contractors have reported union greenmail during the permitting process for two other subsequent phases of refinery conversions to produce reformulated gasoline. Greenmail has also occurred in the permitting process of other petroleum infrastructure projects such as pipelines, storage tanks, marine facilities, and ethanol production plants.

It's fiendishly difficult for developers and non-union contractors and their associations to fight greenmail without years of costly litigation, especially when local elected officials condone the practice. Unions were largely protected by the courts in their use of greenmail until 2002, when the U.S. Supreme Court issued a decision in *BE&K Construction v. NLRB*. The decision seems to dramatically increase protections for employer lawsuits against unions and employees who engage in greenmail.

Perhaps the most insidious aspect of greenmail is that the union demands for labor agreements and the negotiations between developers and unions to reach these agreements are a major part of the permitting process but are completely hidden from the public. Very little documentation is available to the public about greenmail in the petroleum industry because of the secret nature of this extortion and the unwillingness of corporations to risk jeopardizing their projects by exposing the practice. The most thorough summaries of greenmail available to date have been these two journal articles:

Northrup, Herbert and August T. White. "Construction Union Use of Environmental Regulation to Win Jobs: Cases, Impact, and Legal Challenges." Harvard Journal of Law & Public Policy, Vol. 19, No. 1, Fall 1995.

Northrup, Herbert. "Labor Union Tactics: Using Environmental Permitting Regulations to Win Jobs." Government Union Review, Special Edition, 2004.

In addition, the implications of the *BE&K* Supreme Court decision concerning construction union greenmail are analyzed in the following journal article:

Baskin, Maurice and Herbert R. Northrup. "The Impact of *BE&K Construction V. NLRB* on Employer Responses to Union Corporate Campaigns and Related Tactics." The Labor Lawyer, Vol. 19, No 2, Fall 2003.

In a perhaps unique case of newspaper coverage of greenmail against petroleum infrastructure developers, the April 29, 2002 Contra Costa (California) *Times* published a

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front-page article by reporter Peter Felsenfeld, "Unions Join Fights to Cut Deals, Environmentalists Complain." The enclosed article describes how unions challenged Ultramar's Golden Eagle refinery conversion from MTBE to ethanol on environmental grounds, but then left many environmental objectives unaddressed after it won a labor agreement, thus betraying its erstwhile environmentalist allies that were also challenging the project.

The Golden Gate Chapter of Associated Builders and Contractors believes that exposure of union greenmail by the California Energy Commission would allow the public to evaluate the practice and advise their elected officials on whether or not it is good public policy. Research by the Energy Commission could reveal that greenmail has delayed important projects needed by the public, increased costs of projects for developers and subsequently for customers, and reduced competition in the construction market. Therefore, we request that the Energy Commission report on the practice of union greenmail in the petroleum industry in the next Integrated Energy Policy Report.

Also, the Golden Gate Chapter of Associated Builders and Contractors requests that California Energy Commission staff meet informally with non-union industrial contractors to hear an important but neglected perspective on the causes of petroleum infrastructure development constraints in California. Earlier this year, Energy Commission staff met informally with union representatives to discuss how to plan for and improve licensing of petroleum infrastructure in California. The Golden Gate Chapter of Associated Builders and Contractors asserts that construction unions are a cause of constraints on petroleum infrastructure development, not a solution.

Sincerely,



Kevin C. Dayton
Vice President of Government Affairs

enclosure

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Unions join fights to cut deals, environmentalists complain

■ Martinez boilermakers dropped protest for labor pact, a former ally claims

By Peter Felsenfeld

TIMES STAFF WRITER

East Bay environmentalists smelled something fishy last week when a union abruptly dropped its objections to a Martinez refinery construction project.

Communities for a Better Environment and the Boilermakers Union Local 549 came together in February to force Ultramar to conduct impact studies on its

plans to change over to an ethanol-based gas additive.

But the day before the Contra Costa County Board of Supervisors considered the issue, the union switched its position.

Union leaders say they were satisfied with a refinery concession to use clean diesel fuel and modern equipment in the project.

Environmental groups suspect their numerous concerns were sold out for a labor-friendly pledge.

"Typically, the unions get involved in this kind of thing for a

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the environmental review process and bully companies into project labor agreements that exclude nonunion contractors.

Dayton calls the practice "greenmail."

"What we're seeing is union organizers pretending to be environmental advocates," Dayton said. "They extort refinery and power plant owners, delaying their projects until the owners give in and sign project labor agreements."

Over the past several years, labor and environmental groups have joined forces to challenge fast-track approvals of environmentally sensitive construction projects, most notably targeting new power plant proposals statewide.

Unions usually emerge from appeals or other "intervention" proceedings with pro-union policies.

Opponents claim they discriminate against nonunion workers and raise project costs by narrowing the pool of bidders.

California Unions for Relocation, president of the California Building and Construction Trades Council, and chairman of the coalition, called the extortion accusation a "vicious lie."

Kevin Dayton, government affairs director for the Associated Builders and Contractors Golden Gate Chapter, said unions have learned to exploit

environmental community attempts to the group's integrity, Balgenorth said.

"If we were to raise issues that have no substance, how long would anybody listen to us?" Balgenorth said. "Not at all."

The group's mission is to ensure new construction projects, especially power plants, are environmentally and economically sound — the latter indicating a project labor agreement, Balgenorth said.

Project labor agreements dictate labor-management relations in advance, setting standards for hiring, wages and hours. Supporters say the agreements bring projects in on time and on budget by helping to avert strikes.

A 32-union coalition called California Unions for Reliable Energy, or CURE, has had enormous success securing agreements through environmental interventions.

Bob Balgenorth, president of the California Building and Construction Trades Council and chairman of the coalition, called the extortion accusation a "vicious lie."

California Unions for Relocation's long-term relationship with the California Energy Commission and even-

tually won labor-friendly agreements for 23 of the state's 24 newly approved power plants, Balgenorth said.

"These plants include Antioch's Mirant plant; Pittsburg's Delta Energy Center, owned by Calpine and Bechtel; and Calpine's Los Medanos Energy Center, also in Pittsburg.

"We have never raised an environmental issue where part of the settlement didn't address that issue," Balgenorth said. "And we never would. It makes no sense, and we would lose our credibility with everyone."

Some environmentalists question CURE's motivations, but recognize the group adds significant muscle to project challenges.

"The environment is how they get a seat at the table," said John White, a special representative to the Sierra Club. "But they can't get that seat unless they raise valid issues and move those issues forward."

CURE filed environmental interventions with the California Energy Commission and even-

union partners only care about one thing: control of the labor market.

"I'm very disappointed," Drury said after the boilermakers sided with the refinery. "It would have been much better for everybody if we had stuck together and pursued the environmental and labor concerns together. We would have had a cleaner and safer project."

Last week's drama surrounded Ultramar's Golden Eagle oil refinery and an impending ban on MTBE, a gasoline additive and water pollutant.

Now forced to introduce the cleaner ethanol, the company sought to adjust its facilities without conducting an extensive environmental review. The county Planning Commission approved Ultramar's transition strategy in February.

Communities for a Better Environment and the Boilermakers Local 549 appealed that decision, demanding an impact report to explore potential dangers associated with ethanol.

The appeal points ranged from air and water contamination to inadequate terrorist preparation, all backed by "voluminous evidence," according to boilermaker lawyers.

To Communities for a Better Environment's chagrin, the union accepted two refinery conditions: Ultramar agreed to use clean diesel fuel and modern equipment during construction. On Tuesday, Contra Costa supervisors denied the appeal.

Ultramar and union officials denied the settlement hinged on a labor agreement. Company spokesman Mark Hughes said Ultramar pledged a union-only policy long before the appeal. Theodore Franklin, an attorney for the boilermakers, called the Ultramar's mitigation measures significant.

"We consider Ultramar made valuable steps toward environmental compliance," Franklin said. "At that point, we felt it was important to cooperate with the project."